

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

CONOCOPHILLIPS COMPANY	§	
	§	
Plaintiff,	§	
	§	
vs.	§	No. 12-CV-249-JHP-PJC
	§	
1. JUMP OIL CO., INC.,	§	
2. RPM INVESTMENT COMPANY, INC.,	§	
3. JASON A. MILTENBERGER,	§	
4. MELISSA MOORE MILTENBERGER,	§	
5. DAVID A. MILTENBERGER,	§	JURY TRIAL DEMANDED
6. STEVEN A. MILTENBERGER, and	§	
7. SONDR A MILTENBERGER	§	
	§	
Defendants.	§	

**COMPLAINT**

Plaintiff ConocoPhillips Company (“ConocoPhillips”) complains of Jump Oil Co., Inc., RPM Investment Co, Inc., Jason A. Miltenberger, Melissa Moore Miltenberger, David A. Miltenberger, Steven A. Miltenberger and Sondra Miltenberger (collectively “Defendants”) as follows:

**PARTIES**

1. Plaintiff, ConocoPhillips Company, is a Delaware corporation, with its principal place of business in Houston, Harris County, Texas.

2. Defendant Jump Oil Co., Inc. is a Missouri corporation with its principal place of business in Cole County, Jefferson City, Missouri. Jump Oil Co., Inc. may be served with process by serving its registered agent, Steven A. Miltenberger, at 1015 Madison Street, Jefferson City, Missouri 65102, or at such other place as he/she may be found.

3. Defendant RPM Investment Company, Inc. (“RPM”) is a Missouri corporation with its principal place of business in Cole County, Jefferson City, Missouri. RPM may be served with process by serving its registered agent, Timothy Sigmund, at 310 Monroe Street, Jefferson City, Missouri 65101, or at such other place as he/she may be found.

4. Defendant Jason M. Miltenberger is an individual residing in St. Louis County, Missouri and may be served with process at his residence located at 16519 Birch Forest Dr., Wildwood, MO 63011, or at such other place as he may be found.

5. Defendant Melissa Moore Miltenberger is an individual residing in St. Louis County, Missouri and may be served with process at her residence located at 16519 Birch Forest Dr., Wildwood, MO 63011, or at such other place as she may be found.

6. Defendant David A. Miltenberger is an individual residing in Boone County, Missouri and may be served with process at his residence located at 3001 Joshua Tree, Columbia, MO 65202, or at such other place as he may be found.

7. Defendant Steven A. Miltenberger is an individual residing in Cole County, Missouri and may be served with process at his residence located at 204 S. Capistrano, Jefferson City, MO 65109, or at such other place as he may be found.

8. Defendant Sondra Miltenberger is an individual residing in Cole County, Missouri and may be served with process at his residence located at 204 S. Capistrano, Jefferson City, MO 65109, or at such other place as she may be found.

#### **JURISDICTION AND VENUE**

9. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332, because no defendant is a resident of the state in which Plaintiff is incorporated or maintains its principal place of business. Plaintiff ConocoPhillips is a corporation incorporated under the laws of the State of Delaware with its principal place of business in Texas. Defendants Jason A. Miltenberger, Melissa Moore Miltenberger, David A. Miltenberger, Steven A. Miltenberger and Sondra Miltenberger are residents of Missouri. Defendant Jump Oil and RPM are corporations incorporated under the laws of the state of Missouri and maintain their principal places of business in Missouri. The amount in controversy, without interest, cost, or attorneys' fees exceeds the amount specified by 28 U.S.C. § 1332.

10. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2), because it is where a substantial part of the events or omissions giving rise ConocoPhillips's claims arose.

## **BACKGROUND FACTS**

11. Jump Oil is a marketer of gasoline and petroleum-based distillate products to numerous fuel stations in Oklahoma and Missouri. On or about March 1, 2010, ConocoPhillips entered into a Branded Marketer Agreement with Jump Oil (the “BMA”). A true and correct copy of the BMA is attached hereto as Exhibit A. Under the BMA, ConocoPhillips agreed, among other things, to allow Jump Oil to use licensed ConocoPhillips brands and to supply Jump Oil with marketing materials and motor fuels. In return, Jump Oil agreed, among other things, to purchase a minimum amount of motor fuels, to participate in ConocoPhillips marketing programs, and to follow ConocoPhillips guidelines regarding image standards, product identification, price and payment terms, credit cards, and network access.

12. On or about January 12, 2009, Jump Oil and ConocoPhillips executed the First Amendment to the BMA (the “BIP”). A true and correct copy of the BIP is attached hereto as Exhibit B. The BIP discontinued ConocoPhillips Marketing Service Allowance Program, which was contained in the BMA, and replaced it with ConocoPhillips’s functionally equivalent Brand Incentive Program.

13. Under the BIP, ConocoPhillips provided monetary incentive payments to Jump Oil. In return, Jump Oil agreed to remain current on ConocoPhillips brand and image standards and to purchase a minimum volume of gasoline and distillates from ConocoPhillips. The BIP provides that in the event the BMA is terminated, Jump Oil would be responsible for repaying a certain percentage of the incentive payments based on the number of years Jump Oil has been enrolled in the program. The BIP also provides Jump Oil would be responsible for repaying certain incentive payments in the event it failed to purchase the required minimum amount of gasoline and distillates.

14. Jump Oil and ConocoPhillips executed the Second Amendment to the BMA on or about February 1, 2010 (the “Second Amendment”). A true and correct copy of the Second Amendment is attached hereto as Exhibit C. The Second Amendment merely changed Jump

Oil's address for its principal place of business. All other terms of the BMA and BIP remained unchanged and in full force and effect.

15. To secure Jump Oil's debt to ConocoPhillips, RPM Investment Co, Inc., Jason A. Miltenberger, Melissa Moore Miltenberger, David A. Miltenberger, Steven A. Miltenberger and Sondra Miltenberger (collectively, the "Guarantors") each executed an unconditional guarantee of all Jump Oil's present and future indebtedness to ConocoPhillips in March and April 2010. True and correct copies of the personal guarantees are attached hereto as Exhibit D.

16. As additional security, Jump Oil executed a Security Agreement in favor of ConocoPhillips on or about September 14, 2010. A true and correct copy of the Security Agreement is attached hereto as Exhibit E. ConocoPhillips perfected this security interest by a filing UCC Financing Statement on or about September 15, 2010 and a UCC Financing Statement Amendment on or about September 16, 2010. True and correct copies of the financing statements are attached hereto as Exhibit F.

17. Subsequently, Jump Oil failed to pay all amounts due under the BMA. On or about December 15, 2011, ConocoPhillips sent a written demand to Jump Oil which demanded Jump Oil pay all amounts due. A true and correct copy of the Jump Oil demand letter is attached hereto as Exhibit G. ConocoPhillips also sent a written demand to the Guarantors demanding for each to pay all amounts Jump Oil owed to ConocoPhillips. True and correct copies of the Guarantor demand letters are attached hereto as Exhibit H. To date, Jump Oil and the Guarantors have failed to pay all amounts due.

18. Jump Oil continues to be in default under the BMA. As of April 24, 2012, Jump Oil owes ConocoPhillips the following amounts, exclusive of any applicable interest and attorneys' fees:

1) Fuel Charges:	\$2,996,288.58
2) Credit Card Chargebacks:	\$401.34
3) Promotion Charges:	\$7.15
4) Spirit of Performance Charges:	\$3,744.00
5) CCMERCHFUNDISC:	\$62.36
6) Monthly Dial Fees:	\$330.00

7) Circlenet Maintenance Fees:	\$155.00
8) Verifone Software Maintenance and Help Desk Fees:	\$42,385.00
9) EPOS Service Fees:	\$44,750.00
10) BIP Front Load Payments:	\$128,029.55
11) Residual Balance Credit:	<u>\$(433.86)</u>

**Total: \$3,215,719.12**

**COUNT I  
BREACH OF CONTRACT  
(BMA)**

19. ConocoPhillips incorporates each and every foregoing paragraph as if fully set forth herein.

20. ConocoPhillips and Jump Oil executed the BMA on or about March 1, 2010. ConocoPhillips performed all its obligations under the BMA. Jump Oil subsequently breached the BMA by failing to pay all amounts due to ConocoPhillips. ConocoPhillips sent a written demand for payment to Jump Oil on or about December 15, 2011, but Jump Oil refused, and continues to refuse, to pay all amounts due. Due to Jump Oil's breach of the BMA, ConocoPhillips suffered damages in the amount of \$3,215,719.12 as of April 24, 2012, exclusive of any applicable interest and attorneys' fees.

**COUNT II  
BREACH OF CONTRACT  
(GUARANTY AGREEMENT)**

21. ConocoPhillips incorporates each and every foregoing paragraph as if fully set forth herein.

22. RPM Investment Co, Inc., Jason A. Miltenberger, Melissa Moore Miltenberger, David A. Miltenberger, Steven A. Miltenberger and Sondra Miltenberger each executed a guaranty agreement in which they agreed to unconditionally guarantee all of Jump Oil's present and future indebtedness to ConocoPhillips. ConocoPhillips sent a written demand for payment of all amounts Jump Oil owes to ConocoPhillips on or about December 15, 2011. Despite this

written demand, each Guarantor has refused, and continues to refuse, to pay all amounts due. Due to each Guarantor's breach of their guaranty agreement, ConocoPhillips suffered damages in the amount of \$3,215,719.12 as of April 24, 2012, exclusive of any applicable interest and attorneys' fees.

**COUNT III  
ATTORNEYS' FEES**

23. Under the BMA and each guaranty agreement, ConocoPhillips is entitled to recover its costs of collection in the event of a breach, including its reasonable and necessary attorneys' fees. As a result of Jump Oil's breach of the BMA and the Guarantors' breach of their respective guaranty agreements, ConocoPhillips was required to retain the law firms of Beirne Maynard & Parsons L.L.P. and Pray Walker, PC to file this suit. In addition to all amounts due under the BMA and the guaranty agreements, ConocoPhillips seeks the recovery of the reasonable and necessary attorneys' fees it incurs in this suit.

WHEREFORE, Plaintiff ConocoPhillips Company prays that the Court enter judgment on its behalf, award it the costs of suit, attorneys' fees, prejudgment post-judgment interest, and such other and further relief as the Court deems appropriate.

Respectfully submitted,

/s/ Robert J. Winter

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**ATTORNEYS FOR PLAINTIFF  
CONOCOPHILLIPS COMPANY**

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\* Motions for Darin L. Brooks and John G. George, Jr. to appear Pro Hac Vice are being filed concomitantly with this Complaint.